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Remarks/Arguments

In response to the Rejection mailed May 27, 2005, applicants have amended claims 82, 83 and 84 present new evidence in the form of a published U.S. patent application to another and the following remarks.

Claims 82-84 were rejected under 35 USC 112, second paragraph as being indefinite. The examiner contends that claims 82-84 should be amended to depend from claim 79 and that such an amendment would obviate the rejection. It should be noted that these claims were previously indirectly dependant on claim 79 by being dependant on claim 81+. Nonetheless, the claims were so amended as the examiner apparently wishes to broaden the claims by making them directly dependent on claim 79. Accordingly, this rejection has been overcome.

Claims 70 and 79-87 were rejected under 35 USC 103 as being unpatentable over one of four Garger et al patents in view of Koprowski et al and Francon et al. The reasons are the same as presented previously. This rejection is respectfully traversed for the reasons given before and those below.

The examiner urges that Gooding et al (as it appears in Garger et al) teach butanol treatment followed by treatment with PEG. However, the present claims recite the opposite order, namely PEG treatment followed later by organic solvent treatment. No other reference teaches the claimed order. The recitation of "another cycle of resuspension, centrifugation and PEG-precipitation" does not necessarily suggest a second butanol treatment but merely a resuspension. Gooding et al (as it appears in Garger et al) is silent as to what liquid may be used for the optional "another cycle of resuspension, centrifugation and PEG-precipitation." The examiner is adding information to the reference by assuming that it is butanol, which is not permitted. Furthermore, there is no reason to use butanol again since the unwanted plant proteins were already insolubilized by it. Accordingly, the references do not teach the claimed order of purification steps.

Referring to the Koprowski et al, the examiner considers the use of this step to be obvious even if misplaced in order. The argument does not follow. The Koprowski et al

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teaching is to use PEG with NaCl this is added to a different type of solution, a crude homogenate with much more plant material than the present invention. However, the PEG/NaCl is a delicate purification step on an already purified material in the present invention. A skilled wood worker taught to use a chain saw on a tree would not necessarily find it obvious to use the chain saw to sand out a minor scratch on fine furniture. Yet, the examiner argues it so to use a technique for gross separation would be obviously used on an already purified material.

While the examiner has acknowledged a 12-fold higher salt concentration with PEG, this was not considered to impart patentability without showing it to be critical or provide unexpected results. Normally a 12-fold difference in concentration would not be considered to be within a workable range determined by routine experimentation in the minds of most people. Therefore, there is no prima facie argument that it would be obvious to optimize the concentration to such a radical extent. Nonetheless, evidence showing unexpected superior results are available. McCormick et al, U.S. published patent application 20040033585 shows superior results in Figure 12 and Example 7 and Example 8 using the higher salt concentrations with PEG. This publication is long after the filing date of the present application and has overlapping inventors who apparently knew of the claimed method in the present application. Applicants believe the examiner has easy access to this USPTO document and thus a copy is not enclosed. Applicants will provide a copy if so desired.

While the examiner has recognized that Garger et al does not use solvents and even specifically discourage the use of organic solvents, the examiner still considers the use of organic solvents to be obvious. This position may be acceptable provided that Garger et al is not the primary reference supporting the rejection. If Garger et al is used for its teachings, it must be taken as a whole. When taken as a whole, Garger et al teaches away from using organic solvents, and particularly organic solvents with their system. Thus, it is not proper to contend it obvious to add organic solvents to the Garger et al method. In short, you cannot have your cake and eat it too.

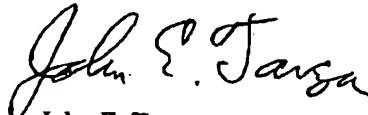
In view of the amendments and comments above, the rejection has been overcome. Reconsideration, withdrawal of the rejection and early indication of allowance are

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respectfully requested. If any issues remain, the examiner is encouraged to telephone the undersigned.

If needed, applicants petition for an extension of time under the provisions of 37 CFR 1.136(a) for sufficient time to accept this response. The commissioner hereby is authorized to charge payment of any fees under 37 CFR § 1.17, which may become due in connection with the instant application or credit any overpayment to Deposit Account No.500933.

Respectfully submitted,



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